

(2015) 07 AHC CK 0248
In the Allahabad High Court
Case No : Special Appeal No. 491 of 2015

Ritesh Kumar Mishra

APPELLANT

Vs

Union Bank of India and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Citation : (2015) 147 FLR 176 : (2015) LLR 1268

Hon'ble Judges : D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Suresh Chandra Srivastava, for the Appellant; Vivek Ratan Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.—This special appeal is from a judgment and order of the learned Single Judge dated 22 May 2015 dismissing a writ petition filed by the appellant against an order dated 6 January 2015 by which he was removed from service after a disciplinary enquiry in which he participated and was furnished due opportunity to defend himself. Advertisement was issued on 27 June 2013 for recruitment to the post of Housekeeper-cum-Peon. The appellant filed a declaration to the effect that he was not a candidate who had passed his 10+2/intermediate examination. In the declaration dated 1 October 2013, the appellant stated that he had passed his high school examination in 2008 and had not qualified at the intermediate examination. An affidavit was also filed to that effect on 3 October 2013. The facts which were stated in the declaration and in the affidavit constituted a fraudulent misstatement inasmuch as it is not in dispute that the appellant had passed his intermediate examination and was not eligible under the terms of the advertisement. On this ground, disciplinary proceedings were held and the appellant was removed from service. The appellant filed a writ petition seeking to challenge the order of termination and seeking his reinstatement in service. The writ petition was dismissed by the learned Single Judge on 22 May 2015. The

learned Single Judge has held that there was clear concealment of facts on the part of the appellant and, hence, he was dis-entitled to relief. It was urged on behalf of the appellant that the first respondent could not have imposed a condition to the effect that a candidate should not have passed the intermediate examination. The learned Single Judge held that the appellant had laid no such challenge to the advertisement dated 27 June 2013 in which the condition was imposed and that the termination from service was not for breach of the condition of the advertisement but for the concealment of material facts.

2. The submission of the learned Counsel for the appellant based on a judgment of the Supreme Court in Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others, , is that the qualification prescribed is a minimum qualification and a higher qualification could not disqualify a candidate from obtaining the job. The difficulty in accepting the submission is that the appellant responded to the advertisement and participated in the process of selection. The condition imposed in the advertisement was not challenged at any stage. The appellant filed an affidavit and a declaration which were admittedly false and contrary to facts which were in the knowledge of the appellant. Though the appellant had passed the intermediate examination, he stated in his declaration that he was only a high school passed candidate. In his affidavit, he stated that he has not passed the intermediate examination. A candidate who has made a fraudulent misrepresentation cannot be heard to now challenge the terms of the advertisement. A disciplinary enquiry was held on a charge of fraudulent concealment which has been duly found to be established. Hence, the dismissal of the writ petition by the learned Single Judge does not warrant any interference. The special appeal is accordingly dismissed. There shall be no order as to costs.